

ST 04-22

Tax Type: Sales Tax

Issue: Exemption From Tax (Charitable or Other Exempt Types)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**ABC COMPANY,
Applicant**

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

No: 04 ST 0000

Sales Tax Exemption Denial

Kenneth J. Galvin

Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Ms. Melissa A. Graham, McDermott, Will & Emery, on behalf of ABC Company; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

Synopsis: On November 26, 2003, the Illinois Department of Revenue (hereinafter the “Department”) denied the second request of ABC Company (hereinafter “ABC” or “applicant”) that the Department issue it an exemption identification number so that it could purchase tangible personal property free from the imposition of use tax as set forth in 35 ILCS 105/1 *et seq.* On January 13, 2004, ABC protested the Department’s decision and requested a hearing, which was held on August 25, 2004, with Mr. John Doe, Executive Director, and Ms. Jane Doe, Housing Program Manager and Coordinator, testifying. The sole issue to be determined at the hearing was whether ABC qualified for an exemption identification number as “a corporation, society, association, foundation or institution organized and operated exclusively for charitable ... purposes.” 35 ILCS

105/3-5(4). Following a careful review of the evidence and testimony presented at the hearing, I recommend that ABC be granted an exemption identification number.

FINDINGS OF FACT:

1. The Department's case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's second denial of exemption dated November 26, 2003. Tr. pp. 5-6; Dept. Ex. 1.
2. ABC was incorporated in 1989 under the Not For Profit Corporation Act of Illinois. Tr. pp. 8-11; App. Ex. Nos. 1 and 2.
3. ABC is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 44-45; App. Ex. No. 23.
4. ABC serves the Anywhere Park community, which is approximately 45% African-American and 45% Latino or Spanish speaking. ABC's Bylaws state that its purpose is to "operate exclusively for charitable and organizational purposes to work with the neighborhood block clubs, churches and other organizations to improve the quality of life for all residents" in the community. Tr. pp. 11-12, 38, 45-46; App. Ex. No. 18.
5. ABC works with a coalition called "National Peoples Action" to address the high foreclosure rates in the neighborhood. ABC also helped establish the "Credit Watch Program" where lenders having high foreclosure rates are cut off from participating in Housing and Urban Development's ("HUD") lending program. ABC has also worked with banks and real estate offices to decrease predatory lending in the area. Tr. pp. 12-15.
6. ABC utilizes the "Community Reinvestment Act," (12 U.S.C. 2903) which requires banks to disclose how many loans are provided within a

given area. This prevents banks from redlining or discriminating against moderate-income residents and ensures that residents of the neighborhood have access to financial products. Tr. pp. 15-16.

7. ABC has helped residents file appeals of their property taxes with the Cook County Assessor's Office. ABC has been involved in city-wide initiatives requiring that if new housing developments come into a community, a certain percentage be set aside for affordable housing. Tr. pp. 16-18.
8. ABC is a HUD certified counseling agency and provides resources and education about housing. In order to become certified, ABC submitted an acceptable housing counseling plan to HUD. Counseling is provided to the entire metropolitan area and there is no charge. ABC conducts workshops for potential home buyers and post-buying workshops covering topics such as what it means to be a homeowner, purchase documents, reverse mortgages for seniors, default counseling and predatory lending. ABC is required to counsel at least 50 individual clients/year for HUD and reports results to HUD yearly. Tr. pp. 19-22, 78-83; App. Ex. Nos. 4 and 5.
9. ABC received a block grant of \$30,000 administered by the Department of Housing of the City of Anywhere for a housing resource center which provides education and resources for housing related issues such as predatory lending, homelessness, preservation of affordable housing, and landlord-tenant issues. The grant funds the salary of one employee at ABC who makes \$24,000/year. The Department of Housing visits ABC to ensure compliance with grant requirements and ABC files quarterly

statements listing landlords, tenants and residents who have been counseled by ABC. The City refers citywide callers with housing problems on its “311” line to ABC. Tr. pp. 19-22, 60-62, 66, 75; App. Ex. No. 3.

10. ABC organized a “Leader Per Block Program” in which the organization works with neighborhood leadership on such topics as safety for children, crime, abandoned houses, street sanitation and abandoned cars. Leaders go back to their blocks and engage their neighbors in activities that improve their quality of life such as gardening and block cleanups. Participants are not compensated. Tr. pp. 20, 22-25; App. Ex. Nos. 6, 7.
11. ABC partners with the XYZ Redevelopment Program. XYZ is the lead agency for the New Communities Program (“NCP”) in Anywhere Park. NCP is a long term, comprehensive approach to urban development that uses neighborhood planning as a central tool for improving the quality of life for community residents. Tr. pp. 25-27; App. Ex. No. 8.
12. ABC has worked with United Parcel Service to recruit from the neighborhood and notifies individuals from the community when there may be job openings. Tr. p. 27.
13. ABC purchased a home in the neighborhood for approximately \$7,400. ABC borrowed \$125,000 from the Chicago Community Loan Fund to rehab the home. After the home was rehabbed, it was sold for \$139,500 with ABC earning approximately \$12,000 from the sale. ABC used the proceeds to purchase a second property needing rehab for \$9,600. Tr. pp. 27-34, 54-55, 63; App. Ex. Nos. 9, 10, 11, 12, 13, 14, 15 and 25.

14. Both homes were purchased from the Hispanic Housing Development Corporation, which bought the bulk of HUD's inventory in the neighborhood. ABC has submitted an application to HUD to become approved to purchase properties directly from HUD at a discount. Tr. pp. 34-35.
15. ABC has an annual membership fee which is \$5 for individuals and \$7 for families. Total membership revenue was \$104 in 2002 and \$101 in 2003. Members get to vote on issues concerning ABC and can run for election for the Board of Directors. Tr. pp. 36-37, 41; App. Ex. Nos. 16, 20 and 21.
16. To be a member of ABC's Board of Directors, one must live, work or worship in Anywhere Park. ABC has a president, vice-president, treasurer and secretary. Board members and officers are not compensated. The Executive Director is paid approximately \$41,000/year. Tr. pp. 37-39.
17. For years ended December 31, 2002 and 2003, ABC had total revenue of \$131,990 and \$121,177, respectively. Of these amounts, 96% and 85%, respectively, were from individuals, corporations and foundations and government contracts and claims. Wages and salaries and related expenses were \$110,626 in 2002 and \$100,846 in 2003. ABC had 4 employees through September, 2003 and 3 employees for the remainder of 2003. Tr. pp. 40-42, 57-58, 64-65; App. Ex. Nos. 19, 20 and 21.

CONCLUSIONS OF LAW:

ABC seeks to qualify for an exemption identification number as a “corporation, society, association, foundation or institution organized and operated exclusively for charitable...purposes[.]” 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11). The applicant bears the burden of proving “by clear and convincing” evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2d Dist. 1991). The burden of proof requires the applicant to produce more than self-serving oral testimony in support of its claims. Brown Specialty Group v. Allphin, 75 Ill. App. 3d 845 (3d Dist. 1979). In order for the applicant to prevail, supporting testimony favoring the applicant should include documentary evidence. Sprague v. Johnson, 195 Ill. App. 3d 798 (4th Dist. 1990). Moreover, it is well established that there is a presumption against exemption and that therefore, “exemptions are to be strictly construed” with any doubts concerning the applicability of the exemption “resolved in favor of taxation.” Van’s Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989). An examination of the record establishes that ABC has demonstrated, by the presentation of testimony and through exhibits and argument, evidence sufficient to warrant an exemption from sales tax.

ABC was incorporated on September 26, 1989 under the Illinois General Not-For-Profit Corporation Act. App. Ex. Nos. 1 and 2. ABC is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. App. Ex. No. 23. ABC’s Bylaws state that its purpose is to “operate exclusively for charitable and organizational purposes to work with the neighborhood block clubs, churches and other organizations to improve the quality of life for all residents” in the Anywhere Park Area. App. Ex. No. 18. “The organization focuses its efforts on building better communities. It is dedicated to developing grassroots leadership to enable community members to work together to

improve their own community.” App. Ex. No. 21. John Doe, Executive Director of ABC, described its “mission” as improving the quality of life for the residents that live in Anywhere Park “through community organizing, building and development.” Tr. pp. 11-12.

In Methodist Old People’s Home v. Korzen, 39 Ill. 2d 149 (1968), the Illinois Supreme Court outlined several factors to be considered in assessing whether an organization is actually an institution of public charity. To qualify, an organization should (1) have no capital stock or shareholders; (2) earn no profit or dividends, but rather derive its funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in its charter; (3) dispense charity to all who need and apply for it; (4) provide no gain or profit in a private sense to any person connected with it and; (5) appear to place no obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses.

The above factors are guidelines for assessing whether an institution is a charity, but are not definitive requirements. DuPage County Board of Review v. Joint Comm’n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461 (2d Dist. 1995). Moreover, an institution need not provide any direct financial assistance to individuals to qualify as a charity. In Methodist Old Peoples Home, the Supreme Court stated that “charity is a gift to be applied ... for the benefit of an indefinite number of persons ... for their general welfare – or in some way reducing the burden of government.” Methodist Old Peoples Home at 156, 157. Accordingly, the law does not limit charity to the provision of financial assistance.

Applying the guidelines from Methodist Old Peoples Home, I conclude that ABC meets several of the criteria for determining whether it qualifies as a charity. One of the

most important factors in determining if an organization is a charity is that the benefits it provides serve the public interest or in some way reduce the burden of government. *Id.* To promote the general welfare, Congress has enacted the National Housing Act, 12 USC 1701 *et seq.* This Act authorizes the Secretary of Housing to contract with qualified non-profit organizations to assist in meeting the Act's mandates in various ways. 12 USC 1701. One way in which this objective is achieved is through the retention of private, non-profit corporations that have demonstrated proficiency in counseling residents on housing issues. (See instructions to "HUD 9900, Application for Approval as a Housing Counseling Agency" published by the U.S. Department of Housing and Urban Development.)

ABC has been approved as a certified housing counseling agency by HUD. In order to become certified, ABC submitted an acceptable housing counseling plan to HUD. As a certified housing agency, ABC conducts workshops for potential homebuyers. ABC also conducts post-buying workshops covering such topics as what it means to be a homeowner, explanation of purchase documents, reverse mortgages for seniors, default counseling and predatory lending. ABC is required to counsel at least 50 individual clients/year for HUD and reports results to HUD yearly. There is no charge for the counseling. Tr. pp. 19-22, 78-83; App. Ex. Nos. 4 and 5. ABC is listed on HUD's web site. Counseling is provided to the Chicago metropolitan and neighboring areas and is not limited to residents of the Anywhere Park area. Tr. p. 83.

ABC also received a block grant of \$30,000 administered by the Department of Housing of the City of Chicago for a housing resource center. This center provides education and resources on housing related issues such as predatory lending, homelessness, preservation of affordable housing, and landlord-tenant issues in the City.

The grant funds the salary of one employee at ABC who makes \$24,000/year. The Department of Housing visits ABC to ensure compliance with grant requirements and ABC files quarterly statements listing landlords, tenants and residents who have been counseled by ABC. The City refers citywide callers with housing problems on its “311” line to ABC and the service ABC provides is not limited to residents of the Anywhere Park area. Tr. pp. 19-22, 60-62, 66, 75; App. Ex. No. 3

ABC partnered with a coalition called “National Peoples Action” to address the high foreclosure rates in the Anywhere Park area. ABC also helped establish the “Credit Watch Program” where lenders having high foreclosure rates are cut off from participating in HUD’s lending program. ABC has also worked with banks and real estate offices to decrease predatory lending in the area. Tr. pp. 12-15. ABC has worked with the “Community Reinvestment Act” which requires banks to disclose the number of loans provided within a community. This prevents banks from redlining or discriminating against moderate-income residents seeking financial products. Tr. pp. 15-16.

ABC organized a “Leader Per Block Program” in which the organization works with neighborhood leadership on such topics as safety for children, crime, abandoned houses, street sanitation and abandoned cars. Leaders go back to their blocks and engage their neighbors in activities that improve their quality of life such as gardening and block cleanups. Leaders are not compensated. Tr. pp. 20, 22-25; App. Ex. Nos. 6 and 7. ABC partners with the XYZ Redevelopment Program. XYZ is the lead agency for the New Communities Program (“NCP”) in Anywhere Park. NCP is a long term, comprehensive approach to urban development that uses neighborhood planning as a central tool for improving the quality of life for community residents. Tr. pp. 25-27; App. Ex. No. 8.

ABC's approval by HUD as a certified housing counseling agency and the block grant that it receives from the City of Anywhere to operate a housing resource center are evidence that ABC is engaged in activities beneficial to achieving the objectives of the National Housing Act and is accordingly reducing a burden on government. ABC's other activities described above plainly serve the public interest in ensuring that affordable housing remains available in the metropolitan area thereby preventing homelessness, strengthening communities and improving the quality of life for residents. There is no residency requirement to receive ABC's services and anyone who requests services from ABC may receive them. Tr. pp. 36-37, 83. ABC does not charge for its counseling services. Tr. p. 83. Based on the evidence and testimony presented, I conclude that ABC is not placing obstacles in the way of those requesting and needing its services and that it dispenses its services to all who need and apply for them.

The record indicates that ABC does not have shares of stock or shareholders. There are no provisions in ABC's bylaws for the payment of dividends. Tr. p. 40; App. Ex. No. 18. ABC's audited financial statements for years ending December 31, 2002 and 2003 show that 96% and 85%, respectively, of its total revenue comes from public and private charity. ABC has an annual membership fee of \$5 for individuals and \$7 for families. Total membership revenue was \$104 in 2002 and \$101 in 2003, which obviously does not represent a significant source of income. App. Ex. Nos. 20 and 21. Members get to vote on issues concerning ABC and can run for election for the Board of Directors. Membership is not required to receive the services ABC offers. Tr. pp. 36-37, 41; App. Ex. Nos. 16 and 21.

For years ending December 31, 2002 and 2003, 76% (\$110,626) and 77% (\$100,846), respectively, of ABC's total expenses consisted of salaries and wages, fringe

benefits and payroll taxes. App. Ex. Nos. 20 and 21. ABC's Board of Directors and officers are not compensated. ABC's Executive Director is paid \$41,000/year. Tr. pp. 38-39. ABC had 4 paid employees through September, 2003, and 3 employees for the remainder of the year. Tr. pp. 64-65. Ms. Jane Doe, who oversees ABC's housing programs, testified that she earned \$24,000/year in 2003. Tr. p. 77. In both 2002 and 2003, ABC's total operating expenses exceeded its revenue. App. Ex. Nos. 20 and 21. Based on the testimony and evidence presented, I conclude that ABC is not providing gain or profit in a private sense to its employees.

In keeping with its mission to promote affordable housing for local residents, ABC purchased a HUD property in 2001 for approximately \$7,400. Tr. p. 29; App. Ex. No. 9. To finance rehabilitation of the home, ABC obtained a loan of \$125,000 from the Anywhere Community Loan Fund. Tr. p. 30; App. Ex. No. 11. After successfully rehabilitating the home, ABC sold it in 2003 for \$135,000 to a low to moderate-income family. Tr. p. 31; App. Ex. No. 12. According to Mr. Doe, ABC had looked at comparable sales in the neighborhood and ABC's rehabbed home was sold for below market value. Tr. pp. 33, 54-55. ABC had a gain from the sale of the home of approximately \$12,000 including some pre-development expenses, such as environmental inspection, that ABC was reimbursed for from the title company. Tr. p. 54. The proceeds from the sale were deposited in ABC's general operating account and ABC then used the proceeds to purchase a second property for \$9,600 which is now in the process of being rehabbed. Tr. p. 33; App. Ex. No. 14 and 15.

ABC purchased both of the above homes from Hispanic Housing Development Corporation, which had acquired the bulk of HUD's inventory in the neighborhood. Tr. p. 34. ABC is currently seeking to be qualified as a HUD non-profit developer. ABC

must have two years experience in housing development to qualify and has now completed its second year. Approval as a HUD non-profit developer will allow ABC to purchase homes directly from HUD at a discount. Tr. p. 35.

In closing arguments, the Department claimed that Methodist Old Peoples Home would require that ABC not sell rehabilitated homes at a price that exceeds the expenses incurred in the rehabilitation, and that in doing so, it is earning a profit. Tr. p. 92. In The People v. Young Men's Christian Association of Chicago, 365 Ill. 118 (1936), the Illinois Supreme Court noted that the charitable nature of an organization depends upon whether its primary purpose is charitable or whether the organization is maintained for gain, profit or private advantage. Based on the evidence and testimony presented at the hearing, I am unable to reach the conclusion that ABC is operated for gain, profit or private advantage. \$9,600 of the \$12,000 gain that was earned on the sale of the rehabbed residence was used to purchase a second property now being rehabbed. In effect, the gain allowed ABC to continue to carry out its mission of promoting affordable housing for local residents. ABC meets several of the guidelines from Methodist Old Peoples Home, and the gain on the sale of the home is insufficient for me to conclude that ABC is not exclusively organized for charitable purposes.

For the foregoing reasons, it is recommended that ABC be granted an exemption identification number.

Kenneth J. Galvin
Administrative Law Judge

Date: 12/6/2004